

Amend Revenue and Taxation Code Section 439.2, related to Mills Act historical properties, to reflect the creation of the Federal Housing Finance Agency that currently publishes the conventional mortgage interest rate information needed to value these properties. (Technical)

Source: Property and Special Taxes Department

Existing Law. The California Constitution authorizes the Legislature to provide for the preferential property tax assessment of historically significant property that is enforceably restricted in order to encourage its conservation.¹ The Legislature created a program known as the Mills Act detailing the requirements.²

The Mills Act grants participating local governments (cities and counties) the authority to enter into contracts with a qualified historical property owner to enforceably restrict the property's use.³ In exchange for use restrictions and a pledge to restore, maintain, and protect the property's historical and architectural character, the property owner receives property tax relief in the form of a reduced assessed value.⁴

The law requires the assessor to value these properties using a prescribed income capitalization method. The "income to capitalize," "capitalization rate," and "capitalization technique" are detailed in statute. Relevant to this proposal, the law requires the Board of Equalization (BOE) to determine and announce the interest component of the capitalization rate.⁵ The interest component is the yield rate equal to the effective rate on conventional mortgages that the federal government publishes, as specified.

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 combined the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB), and the Government Sponsored Enterprise mission office at the Department of Housing and Urban Development (HUD) into the [Federal Housing Finance Agency](#) (FHFA). Therefore, the federal government now publishes the mortgage interest rate information through the FHFA.

This proposal. This technical amendment updates the law to reflect the federal government's reorganization in which the FHFA now publishes the necessary mortgage interest rate information.⁶

¹ California Constitution Article XIII, [Section 8](#) (Proposition 7 – 1976)

² California State Parks Office of Historic Preservation: [Mills Act Program](#)

³ Article 12 "Historical Property Contracts" Government Code [Sections 50280 - 50290](#) (Stats. 1972, Ch. 1442 - Mills)

⁴ Article 1.9 "Historical Property" Revenue and Taxation Code (RTC) [Sections 439 - 439.4](#) (Stats. 1977, Ch. 1040; SB 380) ; BOE [Guidelines for the Assessment of Enforceably Restricted Historical Property](#)

⁵ The capitalization rate consists of four separate components that the assessor adds together. RTC Section 439.2(b) and (c)

⁶ [Published mortgage interest rate information](#)

Section 439.2 of the Revenue and Taxation Code is amended to read:

439.2. When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available, the income shall be the fair rent that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.

(2) Where sufficient rental information is not available, the income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.

(3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated.

For purposes of this section, income shall be determined in accordance with rules and regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted.

Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the revenue. Those expenditures to be charged against revenue shall be only those that are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than October 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as most recently published by the Federal Housing Finance ~~Board~~ Agency as of September 1, rounded to the nearest one-fourth of 1 percent.

(2) A historical property risk component of 4 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(c) The capitalization rate to be used in valuing all other restricted historical property pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than October 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance ~~Board~~ Agency as of September 1, rounded to the nearest one-fourth of 1 percent.

(2) A historical property risk component of 2 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

(e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).

(f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.